

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

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The Minutes

June 23, 2003

At 9:30 a.m., the court met in the Library & Courts Building to begin its court calendar session. Present were Scotland, Presiding Justice; Nicholson, Associate Justice; Morrison, Associate Justice; and Guzman, bailiff. Calendar called.

C037402 RJM ENTERPRISES, INC., et al. v. RIVER JUNCTION RECLAMATION, ETC.

Cause called. Dale A. Stern argued and Alison R. Siegel appeared only for appellants. Daniel S. Traux argued for respondents. Cause submitted.

At 9:52 a.m., the court recessed. At 9:57 a.m., the court reconvened with Scotland, Presiding Justice; Sims, Associate Justice; and Nicholson, Associate Justice.

C040724 LOZA v. BANK OF AMERICA, ETC., et al.

Cause called. Heather Bennett Cibula argued and R. Mona Tawatao appeared only for appellant. Don J. Pool argued for respondents. Cause submitted.

At 10:30 a.m., the court recessed. At 10:35 a.m., the court reconvened with Sims, Associate Justice; Morrison, Associate Justice; and Raye, Associate Justice.

C038907 YBARRA et al. v. GENERAL STAR INDEMNITY COMPANY

Cause called. Stephen D. Trever argued for appellant and submitted additional citations. George E. Murphy argued for respondents. Cause submitted.

At 10:54 a.m., the court recessed. At 10:58 a.m., the court reconvened with Blease, Associate Justice; Nicholson, Associate Justice and Morrison, Associate Justice.

C042965 In re CASSADY H., a Minor; ELIZABETH O. v. JAMES P.

Francia M. Welker, court appointed counsel, argued for appellant. Elliott K. Sevier argued for respondent. Cause submitted.

At 11:20 a.m., the court recessed. At 1:59 p.m., the court reconvened with Scotland, Presiding Justice; Nicholson, Associate Justice; and Morrison, Associate Justice.

C038025 THE PEOPLE v. TURNER

Cause called. Robert Wayne Gehring, court appointed counsel, argued and submitted additional citations for appellant. Robert K. Gezi, Deputy Attorney General, argued for respondent. Cause submitted.

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FOR THE COURT:

SCOTLAND, P.J.
DAVIS, J.
KOLKEY, J.

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June 23, 2003, continued

C041492 In re LIONEL FARLEY ON Habeas Corpus (Certified for Publication)
The order to show cause is discharged and the petition for writ of habeas corpus is denied.
SIMS, Acting P.J.
We concur: Nicholson, J.
 Morrison, J.

June 24, 2003

C040238 THE PEOPLE v. TAFOYA (Not for Publication)
The judgment is affirmed.
RAYE, J.
We concur: Nicholson, J.
 Morrison, J.

C041633 THE PEOPLE v. TAYLOR (Not for Publication)
The judgment is affirmed.
ROBIE, J.
We concur: Scotland, P.J.
 Davis, J.

C041835 THE PEOPLE v. BURGESS (Not for Publication)
The judgment is affirmed.
ROBIE, J.
We concur: Nicholson, Acting P.J.
 Morrison, J.

C039919 HOBLITZELL v. CITY OF IONE (Not for Publication)
The judgment is affirmed. Defendant City shall recover its costs on appeal. (Cal. Rules of Court, rule 27(a).)
KOLKEY, J.
We concur: Blease, Acting P.J.
 Nicholson, J.

C042549 BOGUSLAVSKY v. AGRI et al. (Not for Publication)
The judgment of dismissal is affirmed. Pursuant to California Rules of Court, rule 27(a), costs are awarded to respondents.
ROBIE, J.
We concur: Blease, Acting P.J.
 Morrison, J.

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June 24, 2003, continued

C042290 **In re CHRISTOPHER J. et al.; SACRAMENTO COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES v. MELISSA L. et al. and CHRISTOPHER
J. et al. (Not for Publication)**

The appeal is dismissed.

ROBIE, J.

We concur: Scotland, P.J.

Davis, J.

C042899 **In re M.T. et al.; YOLO COUNTY DEPARTMENT OF EMPLOYMENT AND
SOCIAL SERVICES v. FRANK T. (Not for Publication)**

The orders are reversed. The juvenile court is directed to hold a new hearing on the petition for modification. If the petition is denied, the court shall reinstate the orders terminating parental rights.

RAYE, J.

We concur: Sims, Acting P.J.

Kolkey, J.

June 25, 2003

C036614 **THE PEOPLE v. VALDEZ**
C037039 **THE PEOPLE v. PERAZA (Certified for Partial Publication)**

Defendants' convictions for second degree murder of Mestas's fetus (count II) and the multiple murder special circumstance finding are reversed. In all other respects, the convictions and special findings are affirmed. The sentences are vacated, and the matters are remanded for further proceedings on count II, and for resentencing consistent with the directives in part XIV of this opinion.

SCOTLAND, P.J.

We concur: Davis, J.

Raye, J.

C037193 **THE PEOPLE v. STEWART (Not for Publication)**

The judgment is affirmed.

MORRISON, J.

I concur: Scotland, P.J.

I concur in the result:

Hull, J.

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June 25, 2003, continued

- C040785 THE PEOPLE v. YANG (Not for Publication)**
The judgment is affirmed. The trial court is directed to forward a certified copy of the abstract of judgment (forms CR-290 and CR-292) to the Department of Corrections.
ROBIE, J.
We concur: Scotland, P.J.
Davis, J.
- C041899 FENN et al. v. SHERRIFF (Certified for Publication)**
The judgment is reversed. Plaintiffs shall recover their costs on appeal. (Cal. Rules of Court, rule 27(a).)
ROBIE, J.
I concur: Raye, J.
I concur in the majority's statutory analysis undertaken in part IIA of the majority opinion....
... The summary judgment must be reversed on that basis.
Sims, Acting P.J.
- C042245 CONNERLY v. STATE PERSONNEL BOARD et al. and CALIFORNIA
BUSINESS COUNCIL FOR EQUAL OPPORTUNITY et al. (Not for Publication)**
The judgment is affirmed.
SCOTLAND, P.J.
We concur: Nicholson, J.
Morrison, J.

June 26, 2003

- C042068 THE PEOPLE v. MARICHALAR (Certified for Publication)**
In case No. CM015954, the restitution fine and the parole revocation fine are each modified to \$200. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections.
ROBIE, J.
We concur: Scotland, P.J.
Davis, J.

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June 27, 2003

MISC. ORDER 2003-004

By the Court:

Associate Justice Coleman A. Blease is appointed to serve as Acting Presiding Justice to discharge the duties described in the California Rules of Court, rules 75, 76, 77 and 78, during the absence of the Presiding Justice from the court on June 27, 2003, and June 30, 2003, or until his return. (See Cal. Const. Art 6, Sec. 3.) The senior member of a panel of the Court is designated the Acting Presiding Justice of that panel during the absence of the Presiding Justice.

SCOTLAND, P.J.

C033687 THE PEOPLE v. FLEMMINGS et al. (Not for Publication)

The special circumstances finding as to defendant Clay is stricken; the convictions of both defendants for attempted robbery in court four are reversed with directions to dismiss the charges; and the sentences of both defendants for attempted murder in courts two and three are vacated. The matter is remanded for resentencing (after which the trial court shall send amended abstracts of judgment to the Department of Corrections). In all other respects, the judgments are affirmed.

DAVIS, Acting P.J.

We concur: Nicholson, J.
 Kolkey, J.

C042460 THE PEOPLE v. KING (Not for Publication)

The judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting that defendant was ordered to pay a state penalty assessment of \$10 and a county penalty assessment of \$7 on the \$10 crime prevention fine, and to forward a certified copy of the amended abstract to the Department of Corrections.

DAVIS, J.

We concur: Scotland, P.J.
 Nicholson, J.

C043135 PEOPLE v. WILBURN (Not for Publication)

The judgment is affirmed.

DAVIS, Acting P.J.

We concur: Hull, J.
 Robie, J.

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June 27, 2003, continued

**C032633 STATE PERSONNEL BOARD v. DEPARTMENT OF PERSONNEL
ADMINISTRATION et al. (Certified for Publication)**

The judgments in case numbers C034943 and C040263 are affirmed with the exception that the condition attached to the judgment in case number C034943, referred to in footnote 22, shall be deleted. The original and Amended Unit 8 MOUs, the Unit 11, 12, and 13 MOUs, and the provisions of the Government Code by which the MOUs are authorized or implemented, including sections 18670, subdivision (c), (d), & (e), 19574, subdivisions (c) & (d), 19575, subdivision (b), 19576.5, 19582, subdivisions (f), (g), & (h), and 19582.1, are invalid as in violation of article VII, section 3, subdivision (a). The appeal in case number C032633 is dismissed as moot. (*CERTIFIED FOR PUBLICATION.*)

BLEASE, Acting P.J.

We concur: Davis, J.

Hull, J.

C038488 FARSAI, a Minor, etc., et al. v. ROBINSON, et al.

(Not for Publication)

The judgment is reversed. The trial court is directed to enter a new order granting summary adjudication as to the claims for negligence against Michael, battery, and statutory liability. Peter shall recover his costs on appeal.

MORRISON, J.

We concur: Blease, Acting P.J.

Hull, J.

**C040744 HUNSINGER v. STATE PERSONNEL BOARD and STATE COMPENSATION
INSURANCE FUND**

BY THE COURT:

Appellant's petition for rehearing is denied.

SCOTLAND, P.J.

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June 30, 2003

- C038741 THE PEOPLE v. SAUNDERS (Not for Publication)**
The trial court is directed to prepare a corrected abstract of judgment reflecting an indeterminate term of 50 years to life and to send a certified copy of the same to the Department of Corrections. The judgment is affirmed.
RAYE, Acting P.J.
We concur: Hull, J.
Robie, J.
- C039274 THE PEOPLE v. STANDARD (Not for Publication)**
The judgment is affirmed.
DAVIS, Acting P.J.
We concur: Nicholson, J.
Hull, J.
- C039412 THE PEOPLE v. BELL (Not for Publication)**
The judgment is affirmed.
DAVIS, J.
We concur: Sims, Acting P.J.
Nicholson, J.
- C039825 THE PEOPLE v. SMITH (Not for Publication)**
C040889
The trial court's denial of credits on defendant's sentence is reversed and the matter is remanded to the trial court for a determination of the proper credits. Except as so modified, the judgment is affirmed.
KOLKEY, J.
We concur: Davis, Acting P.J.
Morrison, J.
- C040455 THE PEOPLE v. HOLSTON (Not for Publication)**
The judgment is affirmed.
DAVIS, J.
We concur: Sims, Acting P.J.
Nicholson, J.

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June 30, 2003, continued

C040589 THE PEOPLE v. AITKENS (Not for Publication)

The judgment is reversed, and the matter is remanded to the trial court to allow defendant to withdraw his guilty plea. If defendant so moves, the trial court must grant his motion. If defendant does not move to withdraw his guilty plea within 60 days of the filing of the remittitur in the trial court, the trial court shall reinstate the judgment.

NICHOLSON, J.

We concur: Sims, Acting P.J.
 Morrison, J.

C040701 THE PEOPLE v. TUCKER (Not for Publication)
C040711

In case No. P00CRF0350, the enhancement for a prior prison term in case No. A534558 is stricken.

In case No. P01CRF0093, the trial court's true findings of enhancements for all prior prison terms under section 667.5, subdivision (b), are reversed, and may not be retried.

The cases are remanded for resentencing in accord with the views expressed herein. The second sentencing court shall recalculate the sentence, prepare a new abstract of judgment reflecting the aggregate sentence in both cases, and forward a certified copy to the Department of Corrections.

In all other aspects, the judgment is affirmed.

DAVIS, J.

We concur: Sims, Acting P.J.
 Nicholson, J.

C041821 THE PEOPLE v. RODRIGUEZ (Not for Publication)

The judgment is affirmed.

KOLKEY, J.

We concur: Nicholson, Acting P.J.
 Raye, J.

C041918 THE PEOPLE v. STEWART (Not for Publication)

The judgment is affirmed.

DAVIS, Acting P.J.

We concur: Hull, J.
 Robie, J.

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June 30, 2003, continued

- C042386 THE PEOPLE v. KELLEY (Not for Publication)**
The appeal is dismissed.
NICHOLSON, J.
We concur: Blease, Acting P.J.
Morrison, J.
- C042419 THE PEOPLE v. GREENE (Not for Publication)**
The judgment is affirmed.
BLEASE, Acting P.J.
We concur: Nicholson, J.
Morrison, J.
- C042655 THE PEOPLE v. SAINZ (Not for Publication)**
The judgment is affirmed.
RAYE, J.
We concur: Nicholson, Acting P.J.
Kolkey, J.
- C043056 THE PEOPLE v. KRULETZ (Not for Publication)**
The judgment is affirmed.
BLEASE, Acting P.J.
We concur: Nicholson, J.
Morrison, J.
- C040724 LOZA v. BANK OF AMERICA NT & SA et al. (Not for Publication)**
The judgment of dismissal is reversed. The matter is remanded to the trial court with directions to grant plaintiff leave to amend her complaint. Plaintiff shall recover her costs on appeal. (Cal. Rules of Court, rule 27 (a).)
SCOTLAND, P.J.
We concur: Sims, J.
Nicholson, J.
- C041383 In re ASHLEY O.; DEPARTMENT OF HEALTH AND HUMAN SERVICES v. CHRYSTAL B. (Not for Publication)**
The judgment (order) is affirmed.
NICHOLSON, J.
We concur: Sims, Acting P.J.
Davis, J.

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June 30, 2003, continued

- C041517 In re LARRY R.; THE PEOPLE v. LARRY R.**
(Not for Publication)
The order of the juvenile court (committing the minor to the CYA) is affirmed.
DAVIS, Acting P.J.
We concur: Nicholson, J.
 Hull, J.
- C042530 In re L.B.; SHASTA COUNTY DEPARTMENT OF SOCIAL SERVICES v. GREGORY N. et al.**
(Not for Publication)
The juvenile court's order is affirmed.
MORRISON, J.
We concur: Blease, Acting P.J.
 Nicholson, J.
- C042646 In re IMANI S.; DEPARTMENT OF HEALTH AND HUMAN SERVICES v. SAMUEL S.**
(Not for Publication)
The orders of the juvenile court are affirmed.
BLEASE, Acting P.J.
We concur: Nicholson, J.
 Morrison, J.

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June 30, 2003, continued

**C043676 STEPHANIE B. v. SUPERIOR COURT OF SAN JOAQUIN COUNTY and
HUMAN SERVICES AGENCY OF SAN JOAQUIN COUNTY
(Not for Publication)**

Let a peremptory writ of mandate issue, directing respondent juvenile court to vacate its order terminating petitioner's reunification services and scheduling a section 366.26 hearing. The matter is remanded with directions to the juvenile court to make inquiry as to whether there has been compliance with the notice provisions of the ICWA and, if not, whether there continues to be reason to believe the minor may be an Indian child, thereby requiring such compliance. If the juvenile court determines that proper notice was previously provided for the permanent plan review hearing and no response was received indicating the minor is an Indian child, or if, upon further inquiry, the juvenile court determines that there is no longer reason to believe that the minor may be an Indian child, all previous findings and orders shall be reinstated. If the juvenile court determines that compliance with the notice provisions of the ICWA is required and has not occurred, the court is directed to order proper notice in compliance with the ICWA. Following such notice, if a tribe determines that the minor is an Indian child, or if other information is presented to suggest the minor is an Indian child as defined by the ICWA, the juvenile court is ordered to conduct a new permanent plan review hearing in conformity with all provisions of the ICWA. If no response is received indicating the minor is an Indian child, all previous findings and orders shall be reinstated. In all other respects, the petition is denied.

BLEASE, Acting P.J.

We concur: Nicholson, J.
 Hull, J.

**C039243 BEACH v. HARCO NATIONAL INSURANCE COMPANY
(Certified for Publication)**

THE COURT:

It is ordered that the opinion filed herein on May 30, 2003, be modified as follows:...

There is no change in judgment.

The opinion in the above-entitled matter filed on May 30, 2003, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports, and it is so ordered.

FOR THE COURT:

BLEASE, Acting P.J.
MORRISON, J.
HULL, J.